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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,320	02/07/2002	Russell Mumper	NANO:002USD1	5127

7590. 09/13/2007
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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 09/13/2007

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10072320	2/7/02	MUMPER ET AL.	NANO:002USD1

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EXAMINER

Michael G.. Hartley

ART UNIT**PAPER**

1618

20070911

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents**1) Information Disclosure Statement(s)**

The information disclosure statements filed October 11, 2005, June 26, 2006, December 8, 2006 and February 27, 2007 fail to comply with 37 CFR 1.97(c) because the information disclosure statements lack a statement as specified in 37 CFR 1.97(e). It has been placed in the application file, but the information referred to therein has not been considered.

2) Copies of the information disclosure statements are attached and have been lined-through to indicate that they have not been considered for the reason stated above.

3) The Appeal Brief filed June 22, 2005 is defective for the following reasons:

Summary Of Claimed Subject Matter

Appellant filed an Appeal Brief dated June 22, 2005, in response to the Final Rejection mailed November 17, 2004. The Appeal Brief is not in compliance with the new rules of 37 CFR § 41.37(c) effective September 13, 2004.

37 CFR § 41.37(c) states:

(a)(1) Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.

(c)(1) The brief shall contain the following items...of this section:

(v) Summary Of Claimed Subject Matter. A concise statement of each ground of rejection presented for review.

An in-depth review of the Appeal Brief indicates that the following sections are missing from the Appeal Brief. The Appeal Brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claims argued separately, every means plus functions and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with references to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).

Section 37 CFR § 41.37(c) further states:

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

4) Appellant is requested to submit a "paper" which corrects the Appeal Brief, Summary of Claimed Subject matter as explained above.

5)

a) The discrepancy in the 103(a) rejection is clarified in that in the final rejection mailed November 17, 2004, the inclusion of claim "52" was a typographical error, which should have corrected recited claim "51". This typographical error was corrected in the Examiner's Answer. This is clear from the PTO-326, said final rejection which correctly indicated that claim 51 is rejected. This is also clear from the fact that claim 52 was withdrawn at the time of the final rejected (see claim set in the amendment filed April 30, 2004) and claim 52 has not been appealed (see Claims Index attached to the Appeal Brief filed June 22, 2005).

b) Any paper filed by appellant correcting the Appeal Brief, Summary of Claimed Subject Matter, will be considered when filed.

c) Reply Brief

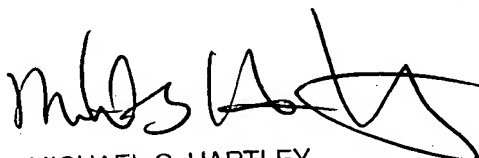
The reply brief filed 12/27/2005 has been entered and considered. The application has been forwarded to the Board of Patent Appeals and Interferences for decision on the appeal.

In addressing the status of claim 58 in the reply brief, it is noted that claim 58 should be pending and should be included in the rejection set forth in the examiner's answer, as this inconsistency appeared to be typographical error based on an amendment canceling claim 58 that was not entered. However, claim 58 has been rejected for the reasons of record in the office action mailed 2/2/2004 and there is no showing on why the claims should not stand and fall together. Claim 58 should be included in the examiner's answer and considered in the appeal as this limitation is addressed in the conclusion of the examiner's answer.

Attachment:

Copies of PTO-1449, filed in the IDS filed October 11, 2005, June 26, 2006, December 8, 2006 and February 27, 2007

Michael G. Hartley
Supervisory Patent Examiner
Art Unit: 1618



MICHAEL G. HARTLEY
SUPERVISORY PATENT EXAMINER

**Notification of Non-Compliant Appeal Brief
(37 CFR 41.37)**

Application No.

10/072,320

Applicant(s)

MUMPER ET AL.

Examiner

Michael G. Hartley

Art Unit

1618

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

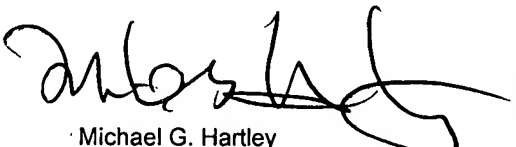
The Appeal Brief filed on 22 June 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See attached PTO-90C.



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